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## Race to the Highest Minimum: California Minimum Wage Increase and San Francisco's New Parental Leave Ordinance

USA | April 13 2016

California's newly increased minimum wages will impact employers in two ways. First, minimum wage employees will have to be paid the higher minimum wage. Second, salaried exempt employees in California must be paid no less than twice the minimum wage, based on a 40-hour workweek. In addition, San Francisco employers with more than 20 employees must supplement state disability insurance benefits to provide six weeks of fully paid parental leave to all employees.

### California Statewide Minimum Wage Increase

On April 4, Governor Brown signed Senate Bill 3, which calls for incremental increases in the minimum wage over the next three years, depending on the size of the employer.

- Employers with 26 or more employees must pay their employees \$10.50 per hour starting Jan. 1, 2017.
- The minimum rate increases to \$11 per hour on Jan. 1, 2018; an additional dollar will be added to the minimum rate each succeeding year on Jan. 1 until the minimum rate reaches \$15 per hour on Jan. 1, 2022.
- The incremental increases are delayed by one year for employers with 25 or fewer employees.
- The governor has discretion to suspend the increases if certain economic conditions decline. After 2022, the California Director of Finance will make future adjustments based on the rate of change in the Consumer Price Index.

The minimum hourly rate for low-wage employees will have a ripple effect on the minimum salary threshold requirement for California employees who are exempt from overtime pay. Under the California Labor Code, an exempt employee must be paid an *annual salary equal to at least twice the amount that would be earned by a minimum-wage hourly employee working a 40-hour workweek*. At the current minimum wage at \$10 per hour, the minimum salary for an exempt employee is \$41,600 annually. Under SB3, the minimum exempt salary will increase incrementally, first to \$43,680 and eventually to \$62,400, once the minimum wage reaches \$15 per hour in 2022. Similarly, the minimum salary threshold for exempt employees under *federal* law is expected to increase to at least \$52,000 later this year.

The rate hike will most directly affect industries that employ low-wage employees, such as the restaurant and agricultural sectors, and other service industries. The increase in labor costs, however, will likely have ripple effects across other industries, including journalism, film and television. Although federal law exempts employees of small newspapers from federal minimum wage requirements, the California labor code has no such exemption. Small newspapers in California must pay hourly employees the California minimum wage, and pay exempt staff the correspondingly higher salary, regardless of the newspaper's circulation size. The rate hike will lead to compression issues across the pay scale – e.g., employees making \$15 now will want a raise when minimum wage employees start to receive the higher rate, etc.

Increases mandated by SB3 will also affect low-wage employees in areas outside of Los Angeles or San Francisco, since L.A. and S.F. already have laws mandating minimum wage increases at or above the incremental increases called for by SB3. Los Angeles, for instance, has already adopted incremental wage increases that will require employers with 26 or more employees to pay a minimum wage of \$10.50 per hour by July 1, 2016, rising to \$15 per hour by 2020. Other California cities have similar minimum wage increase laws, including Berkeley, El Cerrito, Emeryville, Long Beach, Mountain View, Oakland, Palo Alto, Pasadena, Richmond, Sacramento, San Jose, Santa Clara, Santa Monica, and Sunnyvale.

### **San Francisco Paid Parental Leave**

On April 5, 2016, the Budget and Finance Sub-Committee of San Francisco's Board of Supervisors preliminarily passed a parental leave ordinance providing six weeks of supplemental pay to eligible employees who are collecting California Paid Family Leave for the purpose of child bonding, with the intent to provide such employees with full pay for the period during which they are collecting California Paid Family Leave. The new San Francisco ordinance covers *only* child bonding, not all types of family care leaves covered under the California Paid Family Leave statute. The ordinance has not yet been finally passed; the summary below is based on the draft considered by the Board of Supervisors.

Under the current draft, San Francisco's ordinance will take effect on Jan. 1, 2017, and will initially cover companies with 50 or more employees. On July 1, 2017, coverage will expand to companies with 35 or more employees; and on Jan. 1, 2018, to companies with 20 or more employees. An employee will only be eligible for paid leave if he or she: 1) commenced employment at a covered company at least 180 days prior to taking leave; 2) performs at least 8 hours of work for the employer each week within San Francisco; 3) spends at least 40% of his or her total weekly hours within San Francisco; and 4) is eligible to receive funds under the California Paid Family Leave program for purposes of bonding with a new child.

California's Paid Family Leave program, which is funded and paid for through payroll tax, currently provides six weeks of pay to employees who are on unpaid leaves of absence for child bonding or caring for other family members, partially paid at 55% of an employee's weekly wages, up to a maximum benefit amount, which currently is \$1,129 per week. However, on April 11, 2016, Governor Brown signed AB 906 that, when it takes effect in 2018, will raise the percentage of wage replacement through the California Paid Family Leave program to 70% for low-income employees, and 60% for higher-pay employees.

The San Francisco ordinance will require employers to pay the remaining percentage of the employee's wages not covered by the California Paid Family Leave program to bring the employee to full pay when the purpose of the leave is child bonding. Like the California Paid Family Leave Statute, the San Francisco ordinance provides pay for employees on unpaid leaves, but does not itself establish any requirement to provide unpaid leaves.

Employees who receive the maximum benefit amount under California's Paid Family Leave program will not be entitled to 100% of the employee's normal weekly wage. Instead, they will receive supplemental compensation from the employer in an amount determined by dividing the maximum weekly benefit amount by the percentage of wage replacement provided under the California Paid Family Leave program.

Under the San Francisco ordinance, an employee may first be required to apply up to two weeks of unused accrued vacation leave to meet the employer's obligation to provide supplemental compensation. The right to supplemental compensation may be waived through a collective bargaining agreement. Employers are required to inform employees of the new ordinance by conspicuously posting a notice prepared by the city, and must maintain records showing compliance for 3 years. Employees who leave employment within 90 days following the end of parental leave may be required to reimburse the employer for the supplemental pay paid to them (but California employers may not take the reimbursement from employee payroll checks).

## What Should Employers Do Now?

California employers should examine compensation to ensure that all exempt employees are receiving no less than twice the minimum wage under both California and federal law, and whether reclassification to non-exempt status is a better option. Employers may consider the minimum wage increase and narrowed exemptions as an opportunity to restructure pay scales, avoid compression, and ensure compliance with equal pay laws. Employers with employees in San Francisco and other California cities should continue to remain mindful of robust local regulations when making employment decision, beyond just compensation, and should post the required notice and begin compliance with the Paid Parental Leave ordinance as soon as it is finalized by the city. Any review or analysis of employee pay and compensation practices should only be done in a careful, deliberate manner. Employers should consider whether planning changes with the assistance of counsel is a good option, to keep communications about changes in pay structures confidential under the attorney-client privilege and attorney work-product privilege.

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